

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

ERICKA VANDEVENTER, AN INDIVIDUAL,)
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Plaintiff,)
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vs.)
)
SERINA VACIN, AN INDIVIDUAL, AND/OR COUNTRY PREFERRED INSURANCE COMPANY, A FOREIGN INSURANCE COMPANY AND/OR COUNTRY MUTUAL INSURANCE COMPANY, A FOREIGN INSURANCE COMPANY,) Case No. 17-CV-434-JHP
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Defendants.)

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE PLAINTIFF
AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant,
Country Preferred Insurance Company (“**CPIC**”), hereby submits its Notice of Removal. In
support of its Notice of Removal, CPIC alleges and states as follows:

1. The above-captioned matter is a civil action currently pending in Wagoner
County District Court, State of Oklahoma. *See* Plaintiff’s Petition attached hereto as **Exhibit 1**.
This civil lawsuit falls within this Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a).
Accordingly, it can be removed to this Court by CPIC pursuant to the provisions of 28 U.S.C. §
1441, because the parties properly joined and served are completely diverse and the amount in
controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. On August 24, 2017, Plaintiff, Ericka VanDeventer (“**Plaintiff**”) commenced a civil action in the District Court of Wagoner County, State of Oklahoma, styled as *Ericka VanDeventer v. Serina Vacin, an Individual, and/or Country Preferred Insurance Company, a Foreign Insurance Company and/or Country Mutual Insurance Company, a Foreign Insurance Company*, Case No. CJ-2017-00253. *See* Exhibit 1.

3. On November 13, 2017, CPIC was served with a copy of the Summons and Petition through the Oklahoma Insurance Department via certified mail. *See* Summons Returned Executed attached as **Exhibit 2**.

4. Plaintiff brings the current lawsuit pursuant to an automobile insurance policy issued by CPIC. Plaintiff alleges that on August 28, 2015, she was involved in a motor vehicle collision with Defendant, Serina Vacin (“**Vacin**”) and suffered damages. As a result of said damages, Plaintiff submitted a claim to CPIC pursuant to a policy issued to Darrin Dungan. Plaintiff states that she is entitled to benefits under the automobile insurance policy issued by CPIC to Darrin Dungan. *See* Exhibit 1, at ¶¶ 6, 13, and 15.

5. Plaintiff further alleges that CPIC failed to make a settlement offer and unreasonably failed to deal fairly and in good faith with its insured. *See* Exhibit 1, at ¶¶ 22-23. Plaintiff also alleges that CPIC’s conduct was oppressive, malicious, grossly negligent, willful, wanton, and with utter and reckless disregard for the contractual and legal rights of Plaintiff. *See* Exhibit 1, at ¶ 26.

6. As a result, Plaintiff alleges that she suffered delay, loss of coverage benefits, consequential damages, and punitive damages. *See* Exhibit 1, at ¶¶ 24-26.

7. In her Petition, Plaintiff “demands judgement against CPIC and/or CMIC for the full amount of the medical payments and underinsured motorist coverage in excess of

\$75,000.00, pre-judgement and post-judgement interest, punitive and exemplary, a reasonable attorneys fee and costs” *See Exhibit 1.* Accordingly, it is undisputed that the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

8. As to the question of diversity between the parties, Plaintiff is a resident of the state of Oklahoma. *See Exhibit 1, at ¶ 1.*

9. CPIC is foreign corporation incorporated under the laws of the State of Illinois with its headquarters and principal place of business in Illinois.

10. Vacin is alleged to be a resident of the state of Oklahoma, but has never been served in this action. *See Exhibit 1, at ¶ 2.*

11. In addition, on November 19, 2015, Plaintiff settled her claims against Vacin for her full liability limits. *See Letter from Amorie Jones to GEICO dated November 19, 2015, attached as Exhibit 3.*

12. Plaintiff’s voluntary act of settling her claims against Vacin effectively eliminates Vacin as a party in interest to the litigation and, consequently, from determinations of diversity jurisdiction.

13. Pursuant to 28 U.S.C. § 1441(b)(2), this action remains removable despite the presence of an Oklahoma defendant, because the Oklahoma defendant has not been “properly joined and served” as required by the rule. Further, Vacin has been fraudulently joined, is a nominal party, or is no longer a real party in interest, inasmuch Plaintiff has reached a settlement with Vacin.

14. This Court has diversity jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332 because the parties properly joined and served are completely diverse, and because the amount in controversy exceeds \$75,000.00.

15. The Notice of Removal is filed within thirty (30) days following the receipt by CPIC of Plaintiff's Summons and Petition. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446. *See Exhibit 2.*

16. CPIC expressly does not waive any of the defenses and objections set forth in Rule 12(b) of the Federal Rules of Civil Procedure.

17. All state court papers filed in this action at the time of removal and the docket sheet are attached hereto as **Exhibit 4.**

18. Written notice of the filing of this Notice of Removal will be given promptly to the Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Wagoner County, State of Oklahoma as provided by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, Country Preferred Insurance Company requests that this action be removed to the United States District Court for the Eastern District of Oklahoma.

Respectfully Submitted,

WILBURN, MASTERSON & FLEURY

By

s/David R. Fleury

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CERTIFICATE OF MAILING

I, David R. Fleury, hereby certify that on this 22nd day of November, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/David R. Fleury
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